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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
NEXTG NETWORKS OF ILLINOIS,)
INC.,)
) No. 02-0846
Application for a certificate)
of local and interexchange)
authority to to operate as a)
reseller and facilities-based)
carrier of telecommunications)
services.)
Chicago, Illinois
January 22nd, 2003

Met pursuant to notice at 10:00 a.m.

BEFORE:

MR. JOHN RILEY, Administrative Law Judge

APPEARANCES:

MS. KATHERINE SIDDON and
MR. JOHN W. McCAFFREY
321 North Clark Street, Suite 1500
Chicago, Illinois 60610
Appearing for NextG Networks;

1 APPEARANCES (Continued)

2 MS. KAREN CHANG
3 527 East Capital Avenue
4 Springfield, Illinois 62701
5 Appearing for staff.

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17 SULLIVAN REPORTING COMPANY, by
18 Barbara A. Perkovich, CSR

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1	<u>I N D E X</u>		
2		Re-	Re- By
3	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u> <u>direct</u> <u>cross</u> <u>Judge</u>
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1 JUDGE RILEY: Pursuant to the direction of the
2 Illinois Commerce Commission I now call Docket
3 02-0846. This is an application by NextG
4 Networks of Illinois Incorporated for a
5 certificate of local and interexchange authority
6 to operate as a reseller in a facilities-based
7 carrier of telecommunications services.

8 Would counsel for the applicant please
9 enter the appearance for the record.

10 MS. SIDDON: Katherine A. Siddon and John W.
11 McCaffrey, Foley and Lardner, 321 North Clark
12 Street, Suite 1500, Chicago, Illinois 60610.

13 JUDGE RILEY: And Ms. Chang would you enter an
14 appearance for the staff, please.

15 MS. CHANG: Yes, my name is Karen Chang, I am
16 economic analyst at telecommunication division.
17 I am located at 527 East Capital Avenue,
18 Springfield, Illinois 62701.

19 JUDGE RILEY: Thank you, very much. And at
20 this time I would like to invite counsel for the
21 applicant, did you want to call a witness
22 immediately or was there something preliminary

1 that you want to deal with?

2 MS. SIDDON: We need to make sure everyone is
3 aware we filed an amended petition this morning
4 on e-docket and copies have been provided Ms.
5 Chang. Did you get copies of those documents?

6 MS. CHANG: Yes, I did.

7 MS. SIDDON: And the changes to the documents
8 generally are that we are no longer seeking a
9 waiver of Code Part 735.120A dealing with
10 deposits. NextG is no longer seeking a waiver of
11 Code Part 735.190 which deals with dispute
12 resolution, and we have added an Attachment 7 to
13 the application which is an organizational chart,
14 and we have removed all references to requests
15 for waivers of 735.120A, 735.109 from Attachment
16 A.

17 JUDGE RILEY: Does staff have any response or
18 comment?

19 MS. CHANG: I received all those, read all
20 those requests for waivers were removed.

21 JUDGE RILEY: Again, counsel, these were all
22 filed on e-docket this morning?

1 MS. SIDDON: Correct. And they have been
2 served on the service list as well via e-mail.
3 And we have our witness David Kutrer. David, are
4 you on the phone?
5 THE WITNESS: Yes, I am here.
6 (Witness sworn.)
7 DAVID KUTRER,
8 called as a witness herein, having been first
9 duly sworn, was examined and testified as
10 follows:
11 DIRECT EXAMINATION
12 BY
13 MS. SIDDON:
14 Q. Could you state your full name, position
15 and business address for the record, please.
16 A. Sure, it's David Marcell Kutrer. And my
17 business address is 2033 Gateway Place, Suite 500
18 in San Jose, California 95110.
19 JUDGE RILEY: How do you spell your last name,
20 please?
21 THE WITNESS: It's K-u-t-r-e-r.
22 BY MS. SIDDON:

1 Q. And could you briefly describe your
2 qualifications?

3 A. Yes. I am the vice president and chief
4 technology officer of the company. I've been in
5 telecommunications for over 10 years, and I am
6 very knowledgeable on the services that NextG
7 intends to provide.

8 Q. Do you have a copy of the amended
9 application, the amended attachments and amended
10 appendices that were filed this morning?

11 A. Yes, I do.

12 Q. Were these documents prepared under your
13 direction?

14 A. Yes.

15 Q. If I were to ask you the same questions
16 that are contained within the amended application
17 and its attachments would your answers be the
18 same as they were when the application was filed?

19 A. Yes.

20 Q. Do you have any corrections to make other
21 than the amendments to which I referred earlier?

22 A. No.

1 MS. SIDDON: I have no further questions.

2 JUDGE RILEY: Thank you very much. Ms. Chang,
3 did you want to begin your cross examination at
4 this time?

5 MS. CHANG: Yes, your Honor, I have some
6 questions for Mr. Kutrer.

7 JUDGE RILEY: Please proceed.

8 CROSS EXAMINATION

9 BY

10 MS. CHANG:

11 Q. Mr. Kutrer, about this revolving loan
12 agreement which is on the e-docket, are you
13 familiar with this revolving loan agreement?

14 A. Yes, I've seen it.

15 Q. On Page 1, it was dated December blank
16 date of 2002. Could you tell me what day was
17 this prepared?

18 A. It was -- well, it was prepared in
19 December of 2002. Are you asking for the exact
20 day?

21 Q. Well, I think on this electronic copy the
22 date was not provided on my electronic copy. I

1 just want to know if that blank was filled in in
2 the real hard-copy.

3 A. I see. Yeah, actually what we submitted
4 was a draft of the loan agreement. The loan
5 agreement between parent and sub has not been
6 signed yet, but it will be.

7 Q. Oh, it's a draft, okay.

8 A. In this particular form it is.

9 Q. So should the date be a future date?

10 A. We can make it today.

11 Q. Okay. So the signature on the last page
12 was not signed because of the draft format,
13 right?

14 A. That's correct.

15 Q. Are you familiar with the financial
16 information that was filed in this e-docket also?

17 A. Yes.

18 Q. Is this financial information prepared by
19 internal employee or consultant?

20 A. Being for our fiscal year 2002, those are
21 actuals based on operating performance and we
22 have audited results from Ernst and Young. On a

1 go forward basis based on our financial
2 projections, those were developed in-house under
3 the direction of Patty Monahan who is our senior
4 director of finance.

5 Q. Okay. Looking at this operational plan
6 for the fiscal year 2003, has any of this
7 operation come to pass so far?

8 A. Are we looking at the income statement for
9 NextG of Illinois or of --

10 Q. The consolidated. Illinois I don't think
11 any of it has taken place.

12 A. That's correct. So we have not offered
13 any service in Illinois to date. For the
14 consolidated, I don't have the exact number in
15 front of me, but we are kind of mid year through
16 that plan, our fiscal year ends in June of this
17 year, and our current forecast is to meet the 1.3
18 million in revenue that we project.

19 Q. So, in other words, NextG Network, Inc.,
20 New York and California are in operation; is that
21 correct?

22 A. Yeah, NextG Networks, Inc. is in

1 operation, and you'll notice that in 2003 the
2 majority of the revenue is services revenue as
3 opposed to R0 transport revenue. So we are still
4 in the process of establishing our subsidiary
5 companies.

6 Q. So you are not providing any services of
7 this radio frequency transport monitoring
8 services as of yet?

9 A. As of yet, that's correct. We expect to
10 by June.

11 Q. But have you obtained authority to provide
12 services there in California and New York, yet?

13 A. They have been filed.

14 MS. CHANG: I have no more questions, your
15 Honor.

16 JUDGE RILEY: Okay, fine.

17 EXAMINATION

18 BY

19 JUDGE RILEY:

20 Q. Mr. Kutrer, bear with me, I've got just a
21 few of my own. I have to make sure with regard
22 to the certs requested, the amended application

1 has sections 13-403, 404 and 405 checked off; is
2 that correct?

3 A. Yes.

4 Q. You are requesting certs under all three
5 of the statutes. And will the certificate that
6 is issued read NextG Networks of Illinois
7 Incorporated?

8 A. Yes, they will.

9 Q. And there will be no doing business as or
10 assumed names?

11 A. There will not.

12 Q. And this is a Delaware corporation?

13 A. That's correct.

14 Q. And where are the books and records
15 located?

16 A. In San Jose, California.

17 Q. And is it my understanding that you are
18 requesting permission to keep the books and
19 records in San Jose, California?

20 A. That's correct.

21 Q. And would those books and records be
22 available for inspection by Illinois auditors

1 upon request?

2 A. Yes, they would.

3 Q. The loan agreement that Ms. Chang referred

4 to, is that with the parent company here?

5 MS. CHANG: Yes, your Honor.

6 JUDGE RILEY: Ms. Chang, these questions are

7 for Mr. Kutrer.

8 THE WITNESS: Yes. The loan agreement is with

9 the parent company.

10 BY JUDGE RILEY:

11 Q. And the parent company is an operating

12 solvent company; is that correct?

13 A. That's correct.

14 Q. And where are they located?

15 A. In San Jose, California.

16 Q. And is that a California corporation?

17 A. No, it's incorporated in Delaware as well.

18 Q. And what does the loan agreement provide

19 for?

20 A. It provides up to, I believe it's

21 \$3,250,000 over -- well, it's a revolving loan,

22 but it's over, I believe, a two-year period. And

1 the subsidiary can draw down monies from that
2 amount in increments of 100,000.

3 Q. And is it my understanding that these
4 assets or these funds are going to be available
5 to insure that the applicant is going to be able
6 to get the business up and running in Illinois?

7 A. Yes, the funds are available.

8 Q. And who will do the technical support for
9 the applicant as it is needed, will that be the
10 applicant itself or will that be the underlying
11 carriers?

12 A. It will be the subsidiary, the applicant.

13 Q. And will the applicant adhere to all
14 federal and state regulations with regard to
15 slamming and cramming?

16 A. Yes.

17 Q. And will the applicant be offering
18 operator assisted services and will that be
19 handled by the underlying carriers?

20 A. The underlying carrier.

21 JUDGE RILEY: Ms. Chang, do you have a
22 recommendation with regard to this application.

1 MS. CHANG: Yes, your Honor, I recommend that
2 they be granted certs to operate in all three
3 areas. However, I recommend that we receive a
4 hard-copy of that revolving loan agreement with
5 dates and signatures from parent and subsidiary
6 officers.

7 JUDGE RILEY: You want the executed agreement,
8 in other words?

9 MS. CHANG: Yes, please.

10 JUDGE RILEY: Now, do you want just a hard-copy
11 sent to you?

12 MS. CHANG: It can be filed with the clerk's
13 office. I would like to get a copy of it.

14 JUDGE RILEY: Okay, let me ask counsel is that
15 feasible?

16 MS. SIDDON: That's fine. It will be filed as
17 a confidential document as the loan agreement was
18 on e-docket.

19 JUDGE RILEY: Is that sufficient, Ms. Chang?

20 MS. CHANG: Yes, your Honor.

21 JUDGE RILEY: Okay, fine. But ultimately your
22 recommendation is to grant the certs as

1 requested; is that correct?

2 MS. CHANG: Yes, your Honor.

3 JUDGE RILEY: Then do you have any further

4 questions for the witness? Thank you Mr. Kutrer.

5 The only thing I want to deal with now are a

6 couple of exhibits. One would be the

7 biographical sketches that were submitted.

8 Counsel, let me ask you, do these biographical

9 sketches that were submitted with the amended

10 application differ from those that were submitted

11 prior to this time?

12 MS. SIDDON: No, not to my knowledge.

13 JUDGE RILEY: Then what I would like to do is

14 mark those as Applicant's Exhibit 1 if that's

15 okay, and I take it you are moving for their

16 admission into evidence?

17 MS. SIDDON: Yes.

18 JUDGE RILEY: Is there any objection,

19 Ms. Chang, to the admission of the biographical

20 sketches into evidence?

21 MS. CHANG: No, your Honor.

22 JUDGE RILEY: Then Appliant's Exhibit 1 is so

1 admitted. What I want to do is mark as
2 Applicant's Exhibit 2 the income statement as a
3 Group Exhibit 2, the income statement, the
4 balance sheet and the consolidated income
5 statement. And move for the -- take your motion
6 to admit those into evidence.

7 MS. SIDDON: Yes.

8 JUDGE RILEY: And Ms. Chang, again, is there
9 any objection?

10 MS. CHANG: No objections from me, your Honor.

11 JUDGE RILEY: Okay, thank you very much. And
12 how soon do you think you can have that loan
13 agreement filed?

14 MS. SIDDON: David, are you still on the phone?

15 THE WITNESS: Yes, I am here.

16 MS. SIDDON: Could we do that by this
17 afternoon?

18 THE WITNESS: I believe so, yes.

19 MS. SIDDON: We could have it FedEx'd by
20 tomorrow.

21 JUDGE RILEY: All right, fine then. Why don't
22 I mark that as late filed Exhibit No. 3 and the

1 completed loan agreement as filed on e-docket I
2 take it you are moving for the admission of that
3 into evidence?

4 MS. SIDDON: Yes.

5 JUDGE RILEY: And again, Ms. Chang, are there
6 any objections from staff?

7 MS. CHANG: No objections from staff.

8 JUDGE RILEY: Then applicant's Exhibit 3, which
9 is the completed loan agreement as filed on
10 e-docket is admitted as Applicant's Exhibit 3.
11 Did applicant have anything further.

12 MS. SIDDON: Nothing further.

13 JUDGE RILEY: Staff did you have anything
14 further?

15 MS. CHANG: No, your Honor.

16 JUDGE RILEY: Then I will direct the court
17 reporter to mark this record heard and taken and
18 I will prepare an order for the Commission at
19 earliest time.

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21 HEARD AND TAKEN

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